

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Cedarbrooke Place Apartments I, LLLP
Appellant,

v.

Warren County Board of Review,
Appellee.

ORDER

Docket No. 13-91-0498
Parcel No. 63-171-04-0020

On July 1, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. James Sarcone, Risk Management and Insurance Coordinator, of Hubbell Realty Company, West Des Moines, Iowa, represented Cedarbrooke Place Apartments I, LLLP. County Attorney John Criswell is legal counsel for the Board of Review. Assessor Brian Arnold represented it at hearing. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Cedarbrooke Place Apartments I, LLLP, is the owner of a residentially classified property located at 2511 Cedar Street, Norwalk, Iowa. The improved property includes two Section 42 apartment buildings and a clubhouse. Section 42 property is property that is leased or rented to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code. Section 42 limits the amount the individual or family pays for the rental or lease of units in the property. Iowa Code § 441.21(2).

According to the property record card, the subject property consists of three buildings: one clubhouse building and two apartments. The clubhouse has 3366 square feet. One apartment building has three stories, 24-units, and 22,692 gross square feet. The other apartment building has three

stories, 36-units, and 31,692 gross square feet. Both apartment buildings have individual porches/decks and patios. The property is also improved by a 324 square-foot garage, paving, and yard lighting. The real estate was classified as residential for the assessment of January 1, 2013, and valued at \$4,858,100, representing \$534,500 in land value and \$4,323,600 in improvement value.

Cedarbrooke protested its assessments to the Warren County Board of Review on the grounds that the land value was not equitably assessed as compared to comparable properties in the jurisdiction, that the property was assessed for more than authorized by law, and that there was an error in the assessment under Iowa Code sections 441.37(1)(a)(1), (2), and (4). Its error claim asserted the assessment was not determined using the prescribed formula for Section 42 housing under the Code. It asserted the correct fair market value was \$1,772,294, allocated as \$286,838 in land value and \$1,485,456 in improvement value.

The Board of Review denied the protests.

Cedarbrooke then appealed to this Board and asserts only its over-assessment/error claim. It seeks to have the property valued by application of a special method used for Section 42 housing, which considers the subject property's actual income and expenses. § 441.21(2).

James Sarcone testified on Cedarbrooke's behalf. Sarcone stated that Cedarbrooke is an active Section 42 housing unit and should be valued as such. Sarcone said Cedarbrooke was awarded tax credits for this project by Iowa Finance Authority (IFA) in 2010 and land use restrictive covenants were recorded in Warren County in December 2012. (Exhibit 3). The apartments were placed into service December 2012. (Exhibit 1). Cedarbrooke provided an email confirming its active low income housing tax credit (LIHTC) project status. (Exhibit 1). The email was between IFA's Director of Compliance and County Assessor Brian Arnold in June 2013. Cedarbrooke also provided an Internal Revenue Service Form 8609 showing allocation of the low-income housing credits in March 2013 (Exhibit 2).

Sarcone conceded Cedarbrooke inadvertently did not provide income and expense information to the assessor by March 1, as required by administrative rule. Sarcone noted Cedarbrooke is one of eleven Hubbell owned Section 42 projects, but the first project of this type that it owns outside of Polk County. Sarcone explained the filing oversight may have been due, in part, to the fact that the Polk County Assessor's Office sends out a request for this information each year prompting Hubbell to reply, and Warren County does not do this. He also noted that in two instances, Hubbell was late in filing the income and expense information in Polk County, but the Board of Review still accepted the information. Sarcone argues the March 1 filing date is not necessary to confer jurisdiction and does not operate like a statute of limitation, an abatement application deadline, or a Board of Review filing deadline. He believes there should be some flexibility in meeting the filing requirements.

Additionally, Sarcone explained the project's lease-up and income and expense information. He stated the project leased-up quickly in 2012, and a trailing 12-month stabilized income/expense statement was provided as an attachment to the Warren County Board of Review protest in May. The twelve-month stabilized income and expense statement, beginning April 2012 and ending March 31, 2013, reports a net operation income of \$185,382. Sarcone testified the Department of Revenue provided a capitalization rate for 2013 of 10.46%, which is required for all Section 42 properties. Using the capitalization rate of 10.46%, Sarcone, calculated a value of \$1,772,294 for the subject property.

Assessor Brian Arnold testified on behalf of the Board of Review. He reported construction on the subject property started in 2011 and it was given a partial value for that assessment year. In 2012, the property was assessed at market value. Arnold testified he received no income and expense information from Cedarbrooke as of March 1, 2013, the deadline established in the administrative rules. Cedarbrooke's petition to the Board of Review, however, indicated Cedarbrooke was a Section 42 project. Arnold tried to confirm this information through his normal method, which is reviewing

the IFA website. When Arnold checked, the IFA website had not been updated to list Cedarbrooke as an active project. He did not value the property as Section 42 based on the fact that Cedarbrooke missed the March 1 filing date and, in part, because it did not appear on the active listings. He did not contact IFA until late June 2013 after the Board of Review adjourned for its confirmation that Cedarbrooke was an active project as Sarcone reported. In Arnold's opinion, the Board of Review also did not have the necessary documentation to value the property under the Section 42 assessment formula.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). When assessing Section 42 property, the assessor shall value the property using "the productive

and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property.” *Id.*; § 441.21(2). Assessors shall not consider any tax credit equity or other subsidized financing as income in determining the assessed value. Administrative rule 701-71.5(2) sets forth in detail the formula to be used by assessors in valuing Section 42 housing. The rules require Section 42 owners to file income and expense data with the local assessor by March 1 of each year. Iowa Admin. r. 701-71.5(2)(c). The assessor may require the filing of additional information, if necessary. *Id.*

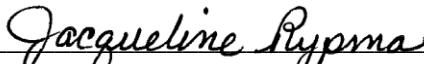
In this case, Cedarbrooke concedes it did not file the required data by March 1. In fact, no income and expense information was provided until the Board of Review petition was filed on May 6. However, it essentially believes the administrative rule’s March 1 filing deadline is a permissive date rather than a mandatory deadline. r. 701-71.5(1)(c).

The rule provides: “It *shall* be the responsibility of the property owner to file income and expense data with the local assessor by March 1 of each year. The assessor may require the filing of additional information if deemed necessary.” *Id.* (emphasis added). However, the rule does not impose a consequence for untimely filing.

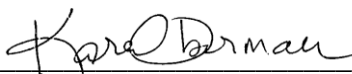
Cedarbrooke did not provide the income and expense data until it filed a petition with the Board of Review petition on May 6. Even if March 1st is not a deadline that precludes valuing the property as Section 42, the Assessor did not even have the information necessary to value the property when his assessment was due on April 15. For this reason, we affirm the Board of Review decision.

THE APPEAL BOARD ORDERS the 2013 assessment of Cedarbrooke Place Apartments I, LLLP, in Norwalk, Iowa, is affirmed.

Dated this 6th day of August 2014.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

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